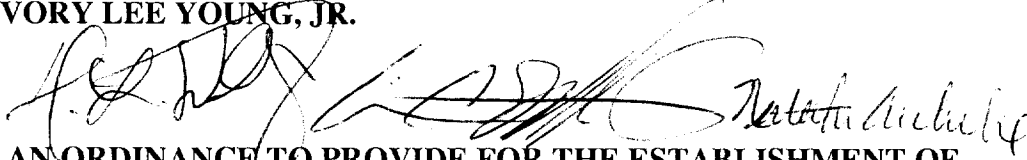


**AN ORDINANCE BY COUNCILMEMBERS MARY NORWOOD, C.T. MARTIN,
AND IVORY LEE YOUNG, JR.**



**AN ORDINANCE TO PROVIDE FOR THE ESTABLISHMENT OF
THE CITY OF ATLANTA BOARD OF CODE ENFORCEMENT; AND
FOR OTHER PURPOSES.**

WHEREAS, the City of Atlanta has a responsibility to create and preserve a safe, healthy, attractive, and economically sound urban environment; and

WHEREAS, the City of Atlanta is committed to maintaining decent, safe, and sanitary environmental conditions within its neighborhoods and commercial corridors; and

WHEREAS, the City of Atlanta recognizes that property that is not kept in a manner conducive to public health and safety contributes to the decline of community spirit and physical appearance of neighborhoods and commercial corridors; and

WHEREAS, in order to promote, protect and improve the health, safety and welfare of the citizens of Atlanta, it is the intent of this ordinance to create an administrative Board with authority to impose administrative fines and other non-criminal penalties to provide an equitable, expeditious, effective and inexpensive method of enforcing any codes and ordinances in force in the City, where a pending or repeated violation continues to exist. The City of Atlanta Board of Code Enforcement is hereby established as authorized by § 36-74-1, et seq. of the Official Code of Georgia.

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA,
RESOLVES AS FOLLOWS:**

Section 1: Intent.

It is the intent of this Ordinance to promote, protect and improve the health, safety and welfare of the citizens of Atlanta by the creation of an administrative board with authority to impose administrative fines and other noncriminal penalties to provide an equitable, expeditious, effective and inexpensive method of enforcing any codes and ordinances in force in the City of Atlanta, where a pending or repeated violation continues to exist.

Section 2: Definitions.

The following definitions will apply to this article except where the context clearly indicates a different meaning:

“Act” mean the Georgia Local Government Code Enforcement Board Act, O.C.G.A. Section 36-74-1, ,, et seq., as it may be amended from time to time.

“Board” means the City of Atlanta Board of Code Enforcement.

“City” means City of Atlanta.

“Code Inspector” means any authorized agent or employee of the City of Atlanta whose duty it is to assure code compliance.

“Code of Laws” means City of Atlanta’s Code of Laws.

“Department” means the Department of Planning and Community Development

“Mayor and Council” means the Mayor and Council of the City of Atlanta.

“Repeat violation ” means any violation of the Code of Laws by a violator whom the Board has previously found in violation of the Code of Laws within one year prior to the repeat violation.

“Violator” means any person, firm, partnership of corporation, tenant, agent or other entity which has committed a violation of one or more provisions of the Code of Laws or which has assisted in the commission of any such violation.

“Violation involving the health or safety of a third party” means a violation of the Code of Laws that creates a legitimate concern for the health and safety of a third party occupant of a dwelling place or that creates an immediate and substantial danger to the environment.

Section 3: Authority of the Board of Code Enforcement.

The Board shall have the following powers and duties under the provisions of this chapter:

(1) To hear and decide cases alleging violations of the Code of Laws, to the maximum extent allowed by the Act;

(2) Adopt rules for the conduct of its hearings, which rules shall, at a minimum, ensure that each side has an equal opportunity to present evidence and argument in support of its case;

(3) Subpoena alleged violators and witnesses to its hearings, with the approval of the City of Atlanta Municipal Court or other court with jurisdiction over a criminal violations of the Code of Laws. Subpoenas may be served by a City of Atlanta Police Officer or by any other individual authorized by O.C.G.A. § 24-10-23 to serve subpoenas;

(4) Subpoena evidence to its hearings in the same way as provided in Paragraph (3)

(5) Take testimony under oath;

(6) Issue orders having the force of law to command whatever steps are necessary to bring a violation into compliance;

- (7) To impose fines upon violators and real and personal property of violators;
- (8) To exercise any and all other powers set forth in the Act and this chapter.

Section 4: Membership.

The Board shall consist of seven members to be appointed as follows:

Councilmembers shall appoint members in the following manner:

- (1) (a) Districts 1, 2, and At-large Post 1
 - (b) Districts 3, 4, and At-large Post 1
 - (c) Districts 5, 6, and At-large Post 2
 - (d) Districts 7, 8, and At-large Post 2
 - (e) Districts 9, 10, and At-large Post 3
 - (f) Districts 11,12, and At-large Post 3
- (2) The President of Council shall appoint one member.
- 3) The initial appointments to the Board shall be as follows:
 Three members shall be appointed for a term of two years each; and four members appointed by Council and Council President for a term of four years each.
- (4) Upon the expiration of the initial terms specified above, all terms shall be for three years. An appointment to fill any vacancy shall be for the remainder of the unexpired term of office.
- (5) The members shall serve in accordance with the policies and procedures of the City and may be suspended and removed for cause. The Council may, with or without cause, refuse to reappoint any member of the Enforcement Board at the expiration of his or her term of office.

Section 5: Qualifications of Board members.

Members of the Board shall be residents of the City of Atlanta. The Council shall make good faith efforts to appoint one or more individuals who have experience or expertise relevant to one or more of the municipal codes under the jurisdiction of the Board, such as property management, engineering (structural or civil), construction, and/or law experience. The absence of such individuals from the membership of the Board shall in no way limit the authority and jurisdiction of the Board.

Section 6: Compensation of members.

Members shall serve without compensation except reimbursed for such travel, mileage, and per diem expenses as may be authorized by d Council or as otherwise provided by law.

Section 7: Officers and rules.

The members of the Board shall elect a chairperson and vice chair both of whom shall be voting members of the Board. The presence of four or more members shall constitute a quorum of any seven-member enforcement Board. Decisions of the Board shall be by

quorum of any seven-member enforcement Board. Decisions of the Board shall be by motion approved by a majority of those members present and voting, except that at least four members must vote in order for an action of the Board to be official. The City Attorney or his/her designee shall represent and be counsel to the Board.

If a Board member fails to attend two of three successive meetings without cause or without approval of the chairperson, the Board shall declare the member's office vacant and ask the Mayor and Council to promptly fill the vacancy. The Board shall adopt and publish policies, procedures and rules in keeping with the provisions of this chapter. Such policies, procedures and rules shall be available in the office of the department.

Section 8: Staff to the Board of Code Enforcement.

The director of the department or his/her designee shall serve as the secretary to the Board. The secretary or his/her designee shall keep minutes and a detailed record of all proceedings, showing the vote of each member on each case, and shall keep records of evidence and official actions, all of which shall be filed in the department and shall be available for public inspection.

Section 9: Meetings.

The Board shall meet at least the 2nd and 4th Tuesday of each month to dispose of matters scheduled. Additional meetings may be called by the chairman or as otherwise provided in the Act. All hearings before the Board shall be open to the public except as provided by law. The alleged violator, the alleged violator's representative, the code inspector and any person whose interests are affected shall be given an opportunity to be heard. The Board shall proceed to hear the cases on the agenda for that day. All testimony shall be under oath and shall be recorded. The Board shall take testimony from the code inspector and alleged violator. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings. The initial presentation of each case before the Board shall be by the code inspector.

Section 10: Hearing.

(a) *General.* No member of the Board shall have the power to initiate enforcement proceedings under this chapter. If a violation of any provision of the Code of Laws is found, the code inspector shall notify the violator and specify a reasonable time to correct the violation. If the violation is corrected and then recurs or if the violation is not corrected by the time specified the code inspector may so notify the violator, but is not required to give the violator a reasonable time to correct the violation. If a violation is not corrected within the time specified, the code inspector shall request a hearing before the Board.

(b) *Notification.* If a repeat violation is found, the code inspector shall notify the violator but is not required to give the violator a reasonable time to correct the violation. The code inspector, upon notifying the violator of a repeat violation, shall notify the Board and request a hearing. The case may be presented to the Board even if the repeat violation has been corrected prior to the hearing, and the notice for the violator shall so state. The matter shall be scheduled for the next available hearing before the Board, and notice of the hearing shall be given as provided in section 22-36.

(c) *Violation presents threat to public welfare.* If the code inspector has substantial reason to believe a violation presents a serious threat to the public health, safety, and welfare or if the violation is irreparable or irreversible in nature, the code inspector shall

make a reasonable effort to notify the violator and immediately notify the Board and request a hearing.

(d) *Continuance.* The Board may continue the hearing from time to time for good cause. The Board shall, in all instances, reach a decision within 15 calendar days from the date of the final hearing at which receipt of all evidence has been concluded.

(e) *Postponed hearing.* When a quorum is not present, or the Board is unable to reach a decision on a case, the hearing shall be postponed until the next scheduled Board meeting, with notification provided in accordance with section 22-36 of this chapter.

(f) *Order to comply/order to pay fine.* Every order to comply and/or order to pay fine entered by the Board shall be executed by the chairperson, or, in the chairperson's absence, the vice-chairperson, and shall be filed in the office of the secretary to the Board.

(1) If after the conclusion of the hearing, the Board finds that a violation does exist, the Board may issue an order to comply consistent with the powers granted in this chapter and the Act, with findings and conclusions. An order to comply shall set forth the street address or a description of the structure and/or premises sufficient for identification. An order to comply shall include notice that it must be complied with by a specified date and that an administrative fine may be imposed if the order is not complied with by said date. The order shall state the nature of the violation, and the Board shall consider the following factors in determining the content of the order to comply.

(a) Existence or nonexistence of a life, health or other type of hazard to the occupant or others in the building or premises;

(b) Severity of the hazard or negative effect upon the community;

(c) Number and extent of separate items that must be completed in order to bring the building or premises into compliance with the relevant codes;

(d) Length of time the violation (s) has been known to exist and the amount of time the code inspector has previously given for compliance;

(e) The existence or nonexistence of mitigating factors which caused the building or premises to be in violation or which may affect the amount of time for compliance.

(f) The Board may divide the violation (s) into groups requiring compliance at various intervals, with inspections to be conducted at each stage by the code inspector.

(2) An order to pay fine shall specify the fine amount as determined and voted upon by the Board, as well as the date and time the fine is due. A certified copy of such order may be recorded in the public records of Fulton County and shall constitute notice to any subsequent purchasers, successors in interest, or assigns if the violation concerns real property, and the findings therein shall be binding upon the violator and, if the violation concerns real property, any subsequent purchasers, successors in interest or assigns. If an order to pay fine is recorded in the public records pursuant to this subsection and the fine is paid by the date and time specified in the order, the Board shall issue an order acknowledging that the fine has been paid in full and such order shall be recorded in the public records. A hearing is not required to issue such an order acknowledging the payment of a fine.

The Board may issue an order to pay a fine against the violator if the cited violation was not corrected within the time specified on the code inspector's notice or if an order to comply was not satisfied within the time specified in said order, even if said violation was corrected and brought into compliance prior to the hearing at which the fine was imposed

Section 11: Hearing notification.

(a) Notification of the Board hearing to the alleged violator shall be given by the director of the department or his/her designee by certified mail, return receipt requested or hand delivery by the code inspector or other persons designated by the department to the alleged violator's usual place of residence; or by leaving said notice at the violator's usual place of residence with any person therein who is over 15 years of age and informing such person of the contents of the notice; or by leaving the notice at the violator's usual place of business with a manager or other upper level employee who is over 15 years of age and informing such person of the contents of the notice, no later than the 15th day before the date of the hearing. The notice shall be in a form approved by the director of the department and shall include a reference to the provisions of the Code of Laws and/or conditions of zoning being violated, and the date, time and location of the hearing.

(b) At the option of the Board, and in addition to the notice described above, notice of the hearing may be published 30 days prior to the hearing once a week for four consecutive weeks in the newspaper in which the sheriffs advertisements are printed for Fulton County. Proof of publication shall be provided and maintained for the official record.

(c) Where efforts to provide notice pursuant to paragraph (a) of this section are unsuccessful, evidence of an attempt to serve the alleged violator pursuant to paragraph (a) together with proof of publication as provided in paragraph (b) shall be sufficient to show that the notice requirements of this section have been met, without regard to whether or not the alleged violator actually received such notice.

Section 12: Notification of decision.

The Board shall provide the violator a copy of the order to comply and/or the order to pay fine by hand delivery or certified United States mail, postage prepaid and return receipt requested, within a reasonable period of time after the decision.

Section 13 : Fines and fees.

The Board may impose fees and fines on a violator as follows:

- (1) A fine not to exceed \$1,000.00 per day for a violation involving the health or safety of a third party.
- (2) A fine not to exceed a total of \$1,000.00 for a violation not involving the health or safety of a third party.
- (3) The Board shall determine fines considering the following factors:
 - a. The gravity of the violation;
 - b. Any actions taken by the violator to correct the violation; and
 - c. Any previous violations committed by the violator.
- (4) The Board may reduce a fine imposed pursuant to this section.

Section 14: Failure to pay fine.

(a) A certified copy of an order to pay fine may be recorded in the public records of any county and thereafter shall constitute a lien against the land on which the violation exists and upon any real or personal property owned by the violator. Upon petition to the Superior Court, such order may be enforced in the same manner as a court judgment by the sheriffs of the state, including levy against personal property, but such order shall not be deemed to be a court judgment except for enforcement purposes. After three months from the filing of any such lien which remains unpaid, the Board may request that the county attorney foreclose on the lien.

(b) No lien imposed under this chapter shall continue for a period longer than 20 years after the certified copy of an order to pay fine has been recorded, unless within that time an action to foreclose on the lien is commenced in Superior Court. In an action to foreclose on a lien, the prevailing party is entitled to recover all costs, including a reasonable attorney's fee, which it incurs in the foreclosure. The continuation of the lien affected by the commencement of the action shall not be good against creditors or subsequent purchasers for valuable consideration without notice, unless a notice of lis pendens is recorded.

Section 15: Remedies.

Nothing contained in this ordinance shall prohibit the Board, acting through the code inspector, from enforcing this ordinance by any other lawful means which include both criminal and civil proceedings; provided, however, that the Board shall not pursue a specific instance of an alleged violation of the Code of Laws against the violator before both the Board and a court authorized to hear violations of local ordinances.

Section 16: Appeal and transfer.

An aggrieved party, including the City, may appeal a final administrative order of the Board to the Superior Court. Such an appeal shall be a hearing de novo. An appeal shall be filed within thirty (30) days of the execution of the order to be appealed.

An aggrieved party, including the local governing body, may appeal a final administrative order of an enforcement board to the superior court of the county in which the subject property is located. Such an appeal shall be in the form of a writ of certiorari governed by Chapter 4 of Title 5 and shall be heard on the record. An appeal shall be filed within 30 days of the execution of the order to be appealed

Section 17: Severability.

It is declared to be the intent of the City of Atlanta that, if any section, subsection, sentence, clause, phrase, or portion of this chapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction such portion shall be deemed a separate, distinct and independent provision, and such holding shall not effect the validity of the remaining portions thereof.

Section 18: Conflict.

All ordinances or parts of ordinances in conflict with this ordinance, are waived to the extent of the conflict.